

## Chapter 1447. Nonconforming Uses and Structures.

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### § 1447-01. Purpose.

The purpose of this Chapter is to regulate:

- (a) **Nonconforming Uses.** Uses lawfully established prior to the effective date of this code that do not conform to the use regulations of this code in the zoning districts in which such uses are located; and
- (b) **Nonconforming Structures.** Buildings and structures lawfully constructed prior to the effective date of this code that do not comply with the applicable bulk regulations of this code in the zoning districts in which such buildings or structures are located.

### § 1447-03. Authority to Continue and Maintain.

Nonconforming uses and structures may be continued as follows:

- (a) **Continuation of Nonconforming Use.** A nonconforming use that lawfully occupies a structure or a land site on the effective date of this Code may be continued so long as it remains otherwise lawful, subject to the standards and limitations in this chapter.
- (b) **Continuation of Nonconforming Structure.** A nonconforming structure that lawfully occupies a lot on the effective date of the Cincinnati Zoning Code and that does not conform with the standards for yards, buffers, height, floor area of structures, driveways, location of parking or open space for the district in which the structure is located may be used and maintained, subject to the standards and limitations in this chapter.
- (c) **Continuation of Nonconforming Accessory Uses and Structures.** The continued existence of nonconforming accessory uses and structures is

subject to the provisions governing principal nonconforming uses and structures set forth in this chapter

- (d) ***Maintenance, Repair and Structural Safety.*** Normal maintenance and incidental repair may be performed on a conforming structure that contains a nonconforming use or on a nonconforming structure.

#### **§ 1447-05. Nonconforming Structures.**

A nonconforming structure may not be moved, expanded or altered, except in the manner provided in this section or unless required by law.

- (a) ***Repair, Maintenance, Alterations and Expansion.*** A nonconforming structure may be repaired, maintained, altered or enlarged; provided, however, that no such repair, maintenance, alteration or expansion shall either create any new nonconformity or increase the degree of the existing nonconformity of all or any part of such structure.
- (b) ***Moving.*** A nonconforming structure may not be moved, in whole or in part, for any distance whatsoever, to any other location on the same lot or to any other lot unless the entire structure conforms to the regulations of the zoning district in which it is located after being moved.

#### **§ 1447-07. Abandonment of Nonconforming Use.**

A nonconforming use of land or of a structure in a district that is abandoned may not be reestablished or resumed. Any subsequent use or occupancy of the structure or land must conform to the regulations for the district in which it is located.

Abandoned means the interruption for a period of 365 consecutive days of active or productive operations of the nonconforming use on the land or within the structure or the removal or destruction of the nonconforming elements. Any period of abandonment caused by government action and without any contributing fault by the nonconforming user is not considered in determining the period of abandonment.

#### **§ 1447-09. Expansion of Nonconforming Use**

On application to the Zoning Hearing Examiner pursuant to the procedures and standards established in this chapter, a nonconforming use may be expanded subject to the standards as follows:

- (a) A nonconforming use may be expanded through the entire building, however, expansion of the existing building is prohibited.
- (b) The expansion of the nonconforming uses of land without buildings may not exceed, in all, 50% of the area devoted to the existing nonconforming use of land. Provided further that expansion of a nonconforming use is

limited to expansion on the lot currently occupied by the use and may not extend beyond a district boundary line into a more restrictive district.

## § 1447-11. Substitution of a Nonconforming Use.

The Zoning Hearing Examiner may allow the substitution of a nonconforming use for another nonconforming use permitted in another district as specified in Schedule 1447-11 - Substitution Rights for a Nonconforming Use. Whenever any nonconforming use is changed to a conforming use, such use may not later be changed to a use other than a conforming use.

### Schedule 1447-11 - Substitution Rights for a Nonconforming Use

Location of Nonconforming Use	Substitution Rights	Location of Nonconforming Use	Substitution Rights	Location of Nonconforming Use	Substitution Rights
SF-20	None <sup>1</sup>	RM0.7	OL	CGA	ML
SF-10	None <sup>1</sup>	OL	OG	DD	None
SF-6	None <sup>1</sup>	OG	CN-P, CN-M	ML	MG
SF-4	None <sup>1</sup>	CN-P	CN-M	MG	None
SF-2	None <sup>1</sup>	CN-M	CC-P	RF-R	RF-C
RMX	RM0.7	CC-P	CC-M	RF-C	RF-M
RM-2.0	RM0.7	CC-M	CC-A	RF-M	None
RM-1.2	OL	CC-A	CG-A	I-R	None

<sup>1</sup>See § 1447-13

## § 1447-13. Nonconforming Residential Buildings.

In the case of a nonconforming residential building, an increase in the number of dwelling units within the existing floor area or through an extension of the floor area is not permitted. Provided, however, in the case of a building used in part for nonresidential purposes, if the nonresidential use is relinquished, the number of dwelling units may be increased by one within the existing floor area irrespective of the minimum lot area for every dwelling unit requirements of the district in which the building is located.

## § 1447-15. Application Procedures.

An application for a substitution of a nonconforming use may be filed with the Director of Buildings and Inspections in accord with the application procedures under Chapter 1441, Application Procedures, Fees, Permits and Certificates. Applications must include a complete description of the proposed use and such other information as the Zoning Hearing Examiner determines is necessary to decide the application, as shown on the application form approved by the Zoning Hearing Examiner. In the review and decision of applications, the following procedures apply:

- (a) **Staff Report.** The director has the duty to prepare a staff report on the application and transmit the staff report to the Zoning Hearing Examiner prior to the public hearing.

- (b) **Public Hearing.** The examiner has the duty to schedule and hold a public hearing on the completed application in accord with the procedures for conduct of the public hearing set forth in § 1443-07.
- (c) **Action.** Staff reports received by the examiner are to be considered at a public hearing. Following the conclusion of the public hearing and within ten working days, the examiner has the duty to take one of the following actions:
  - (1) Approve the application.
  - (2) Approve the application subject to specific conditions.
  - (3) Postpone a decision pending consideration of additional information.
  - (4) Deny the application.
- (d) **Coordinated Review and Approval of Applications.** Whenever, in addition to approval of an application for a substitution of a nonconforming use pursuant to this chapter, the applicant also requires a variance or other approval from the examiner, the applicant must simultaneously file all other applications and required applications with the director. All required notices must include reference to the request for all required examiner approvals.

**Conditions.** The Zoning Hearing Examiner may impose such conditions that are determined to be in the public interest and necessary to mitigate any harmful effects of the substitution of the nonconforming use. The EXAMINER may require a bond or other acceptable form of surety to insure compliance with the conditions imposed. These conditions must be expressly set forth in the examiner's decision.

## **§ 1447-17. Standards for the Expansion or Substitution of Nonconforming Uses.**

The Zoning Hearing Examiner may approve, approve with conditions or disapprove an application for expansion or substitution of a nonconforming use as limited in § 1447-09 and § 1447-11 based on written findings of fact in consideration of the following standards. The failure of the proposed work to conform with any single factor or standard may not necessarily be a sufficient basis for denial:

- (a) **Consistent.** The proposed use is consistent with the general purposes and intent of the Cincinnati Zoning Code;
- (b) **Safety and Efficiency.** The proposed use promotes the safe and efficient use of land;
- (c) **Compatibility.** The proposed use is compatible with other adjacent land uses and buildings existing in the surrounding area;
- (d) **Neighborhood Compatibility.** The proposed use is consistent with the purposes of the zoning district in which the use is located and does not negatively impact the value of surrounding property; and
- (e) **Limited Purpose Building.** The proposed use would be located in a building that is specially equipped or structurally designed for that use.

## **§ 1447-19. Limitations on Expansion or Substitution of Nonconforming Use.**

Subject to an extension of time granted pursuant to Chapter 1445, Zoning Hearing Examiner Procedures, an expansion or substitution of a nonconforming use must be completed within two years of the date of the decision in accordance with the provisions of § 1443-09.

## **§ 1447-21. Revocation of Expansion or Substitution of Nonconforming Use.**

Violation of any condition or limitation on the grant of an approval of an expansion or substitution of a nonconforming use is a violation of the Cincinnati Zoning Code and constitutes grounds for revocation of the approval, pursuant to the provisions of Chapter 1451, Enforcement.

**§ 1447-23.                    Reconstruction of Nonconforming Use and Structure.**

A nonconforming use, building or structure, or improvement or one or more of a group of nonconforming buildings or structures related to one use and under one ownership, substantially destroyed by fire, flood, earthquake or other act of God, may not be reconstructed or used as before such calamity.

As used in this section, “substantially destroyed” means that the estimated cost of reconstruction exceeds 150 percent of the assessed improvement value as determined from the records of the Hamilton County Auditor of all the buildings or structures within the group of one or more nonconforming buildings or structures related to one use and under one ownership. The estimated cost of reconstruction is as submitted in a verified affidavit acceptable to the Director of Buildings and Inspections as reasonable. The repairs and reconstruction must be completed within two years of the date of the damage.

If the estimated cost of reconstruction exceeds 150 percent of the assessed improvement value, the use of the property and the reconstruction of the building must be in accordance with the provisions of this Zoning Code.